IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

CRL.REF.No. 9 of 2007()

SC.340/2005 of ADDL. DIST. COURT (ADHOC)III, PATHANAMTHITTA
CP.136/2004 of J.M.F.C., ADOOR

.....

ON THE REPORT SUBMITTED BY DISTRICT & SESSIONS JUDGE, PATHANAMTHITTA

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

Crl.Ref.No.9 of 2007

Dated this the 1st day of June 2007

O R D E R

This criminal reference has been registered on the basis of a letter received from the District and Sessions Judge, Pathanamthitta. It relates to S.C.No.340/05 pending before the Additional Sessions Judge (Adhoc) Fast Track No.III, Pathanamthitta. The case was committed to the court of Session by the learned Magistrate concerned as per order in C.P.No.136/04 dated 10/11/2004. That case was registered under Section 8 and 55 of the Kerala Abkari Act. There was only one accused. The said accused was committed overlooking the fact that the accused is aged below 18 years and was a juvenile on the relevant date. The learned Additional Sessions Judge (Adhoc) Fast Track No.III, Pathanamthitta in the course of the proceedings before him realised the fact that the accused was a juvenile. He then realised that the committal was incorrect and improper and in violation of the mandate of Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The

learned Judge could not set aside the order of committal as he does not have the jurisdictional competence to do the same. Accordingly reference has been made of the case through the learned District and Sessions Judge by the learned Additional Sessions Judge. It is obvious that the learned Magistrate has overlooked/omitted to take note of the fact that the accused is a juvenile and deserves to be dealt with in accordance with the provisions of Section 7 of the Juvenile Justice Act. The order of committal is thus incorrect and improper, it having been seen beyond controversy that the accused was a juvenile on the date of commission of the offence.

2. What next to be done is the only question. Ideally, the order of committal must be set aside. The matter can be sent to the learned Magistrate so that the learned Magistrate can take action under Section 7 of the Juvenile Justice Act. I am satisfied that in the interests of expedition and in the interests of disposing of the case against the juvenile expeditiously, the order can be set aside and the Additional District and Sessions Judge, Fast Track can be directed to forward the records and accused to the Juvenile Justice Board. The Juvenile Justice Board

shall reckon the same as a case sent to the Juvenile Justice Board by the learned Magistrate concerned under Section 7 of the Juvenile Justice Act and shall proceed accordingly, in accordance with law thereafter.

This criminal reference is thus answered as indicated above.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007